

DONNA D. SANCHEZ
Claimant

HABANEROS MEXICAN RESTAURANT
Respondent

ITT HARTFORD
Insurance Carrier

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ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The preliminary hearing Order should be affirmed.

The Appeals Board has jurisdiction to review the insurance issue at this stage of the proceeding because it directly addresses the question whether claimant's accident is covered under the Workers Compensation Act. Under K.S.A. 44-542a, self-employed individuals may bring themselves within the provisions of the Act by securing insurance coverage. Therefore, if claimant is deemed to have obtained insurance coverage upon herself, her accident would

be compensable under the Act. If not, the accident is not compensable. Therefore, in this specific instance, the insurance coverage issue is a jurisdictional issue which may be addressed in the review of a preliminary hearing order.

The Appeals Board adopts the findings and conclusions set forth in the preliminary hearing Order as its own.

Claimant, Donna D. Sanchez, is the owner and sole proprietor of Habaneros Mexican Restaurant. After claimant injured her back on September 3, 1996, the insurance carrier denied claimant's request for workers compensation benefits because claimant, as the owner and sole proprietor, was purportedly excluded from coverage in the insurance policy issued.

After opening her restaurant, claimant consulted her local insurance agent and ultimately obtained a workers compensation insurance policy from ITT Hartford. Page 1 of the policy designates the named insured as "Donna Sanchez DBA-Habaneros Mexican Restaurant" and also indicates the named insured is "Individual."

ITT Hartford mailed claimant a letter in December 1995 and again in February 1996 which is ambiguous and fails to notify claimant that she had not obtained workers compensation insurance coverage upon herself. Rather, the letter indicates that something, either the application for insurance or the policy itself, needed to be revised to exclude her from coverage. Claimant did not respond to that letter because she desired workers compensation coverage upon herself.

When considering all the evidence, the Appeals Board agrees with the Administrative Law Judge and finds that the insurance carrier represented to claimant that she was covered under a policy of insurance and that it should now be estopped from denying such coverage.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated October 13, 1997, entered by Administrative Law Judge Bruce E. Moore should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

c: Francis G. Townsdin, Phillipsburg, KS
P. Kelly Donley, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director